State of North Carolina. The Sheriff of Union County and other peace officers of the State have been unable to find Petitioners or to gain any knowledge or information as to their whereabouts.

STATEMENT OF FACTS

The records already on file in this Court, reference to which is cited above, will give the facts shown by the State in regard to this kidnaping. The records will further show that none of the Petitioners have testified as witnesses in their own behalf and where they would be subject to cross-examination, and Petitioners have never denied the evidence of the State. The simple facts as to the kidnaping are as follows:

On August 27, 1961, G. Bruce Stegall and his wife, Mabel Stegall, came into the Town of Monroe on the way to see Mrs. Stegall's mother. They drove out of town, went over a bridge, and turned into Winchester Avenue where they saw a crowd of people in the street. Mrs. Stegall told her husband to turn around and get out of that place, and he turned the car into Boyte Street in order to turn around. Before they could get away the car was surrounded by colored people and they were ordered out of their car, one of the Petitioners being on the driver's side of the Stegall car armed with a rifle. Another Petitioner was on another side of the car, armed with a rifle, and ordered Mrs. Stegall out of the car. The Stegalls were taken to the home of Robert Williams (Williams was not on trial because he sought asylum in the Communist Government of Castro's Cuba). A large crowd of people gathered around the Stegalls in the front yard of the Robert Williams residence. The Stegalls were taken inside the house and into a bedroom where they were guarded by May Mallory with a rifle at all times. The defendant Crowder produced cords and the Stegalls were tied together back to back. They were then moved to another house on the same street, having been taken out the back door and escorted by several people; and in this process Mrs. Stegall walked forward and Mr. Stegall walked backward because of the

way they were tied. The Petitioner Reep secured a chair and took it to the empty house and the Petitioner Crowder secured some chairs and carried them to the house with a rifle. The Petitioner Mallory guarded the Stegalls with a rifle and a flashlight and made some remarks to the effect that she had itchy fingers and that the quieter they were the longer they would live. The Petitioner Lowry was present and after the Stegalls were forced out of their car Lowry got into their car, stating that he would drive the car out of the street. The Stegalls were guarded not only by May Mallory but by other armed persons. About nine o'clock they were untied, given their car keys and drove away. Lowry had been staying at what is called "Freedom House", he spent some time at Dr. Perry's house and he had been eating his meals at the home of Robert Williams. Lowry contended that he had been given a rifle but that he did not use it and sat it down next to a tree. The "Freedom House" that is referred to is the house to which the Stegalls were taken from the Williams house. The object of this kidnaping, as will be seen from the telephone conversation between Chief of Police A. A. Mauney and Mr. Stegall, was to hold the Stegalls as hostages until certain colored persons who were prisoners were released.

ARGUMENT

The Petitioners' Statement of Facts

The statement of fact of the Petitioners as to all of the demonstrations, picketing and activities of the Ku Klux Klan constitute the usual stereotyped and canned language which a southern state has to meet in cases of this type before this Court. Even if these statements were true they relate to collateral matters which were never before or passed upon by the Supreme Court of North Carolina. There is absolutely no evidence whatsoever in the two State records before this Court (No. 509 and No. 510, Supreme Court of North Carolina, Fall Term, 1965,) which support these allegations. So far as the Ku Klux Klan is concerned there is some activity of this organization in this State but we are the people who convicted the Grand Wizard of the Klan and the Titan of the

Klan and sent them to the State Prison (STATE v. COLE, 249 N. C. 733, 107 S. E. 2d 732). In another instance we prosecuted certain Klan members and they entered pleas of guilty. At the time of the writing of this brief we have restrained the Klan by injunction from holding a meeting in this State. As we pointed out before, the Petitioner Mallory fled the jurisdiction of the State and had to be extradited, and the prosecuting officer not wishing to try the case piecemeal did not bring the case to trial until the Petitioner Mallory was brought back to the State. As will be seen from records already before this Court, one Robert Williams who participated in this kidnaping fled to Communist Cuba, where he is now a propaganda agent for Fidel Castro, and many of his radio and television broadcasts have been monitored in this country. Williams has also made a trip to Hanoi where he delivered a propaganda broadcast. No one will tell the State officers where the Petitioners are now and what the Petitioners really propose to do is to remain fugitives from the State of North Carolina, and if this Court reverses this case and discharges their sureties, then we will never see them again. We also call attention to the fact that G. Bruce Stegall and his wife, Mabel Stegall, were not participants in any of these things complained about, but, to the contrary, lived outside Monroe about two miles from a town called Marshville and had started to visit Mrs. Stegall's mother, and they apparently became lost on the outskirts of Monroe. If the State of North Carolina is not entitled to prosecute these Petitioners for forcibly seizing the Stegalls, tying them up and holding them prisoners under armed guard, then the State is not entitled to prosecute any crime.

Appearance Bond Procedure of North Carolina

We give below the pertinent statutes dealing with the forfeiture of bail in North Carolina, as follows:

Article 11

Forfeiture of Bail.

§ 15-110. *In recognizance to keep the peace.*—Every per-

son who shall have entered into a recognizance to keep the peace shall appear according to the obligation thereof; and if he fail to appear the court shall forfeit his recognizance and order it to be prosecuted, in the manner provided by law, unless reasonable excuse for his default be given.

§ 15-111. *When recognizance deemed broken.*—No recognizance taken under this chapter shall be deemed to be broken except in the failure of the principal in such recognizance to appear and answer according to the obligation thereof, unless such principal be convicted of some offense amounting in judgment of law to a breach of such recognizance.

§ 15-112. *Recognizance prosecuted.*—Whenever evidence of such conviction shall be produced in the court in which the recognizance is filed, it shall be the duty of such court to order the recognizance to be prosecuted, and the solicitor shall cause the proper proceedings to be thereupon taken.

§ 15-113. *Notice of judgment nisi before execution.*—No execution shall issue upon a forfeited recognizance, or to collect a fine imposed nisi, until a notice has issued against the person who has forfeited his recognizance or upon whom the fine has been imposed, and his sureties. The clerk shall issue a writ of scire facias directed to the process officer of the court and of the county.

§ 15-114. *What notice must contain.*—When any recognizance, acknowledged by a principal and sureties, shall be forfeited by two or more of the recognizors, the notice issued shall be jointly against them all, designating which of them are principals and which sureties, and when they are bound in different sums, stating the amount forfeited by each one, and the clerk shall have no greater fee on such notice than is due when it is issued against one defendant.

§ 15-115. *Service of notice.*—All notices issuing upon forfeited recognizances shall be executed by leaving a copy with each of the defendants, or at his present place of abode. And

in case he cannot be found, and has no known place of abode, and the matter be returned, then a notice shall issue, and on the like return the same shall be deemed duly served.

§ 15-116. *Judges may remit forfeited recognizances.*—The judges of the superior courts may hear and determine the petition of all persons who shall conceive they merit relief on their recognizances forfeited; and may lessen, or absolutely remit, the same, and do all and anything therein as they shall deem just and right and consistent with the welfare of the State and the persons praying such relief, as well before as after final judgment entered and execution awarded.

§ 15-117. *Money refunded by clerk.*—The clerk of the superior court, on the remission of any forfeited recognizance which has been paid into his office, shall refund the same, or so much thereof as shall be remitted.

§ 15-118. *Money refunded by treasurer.*—If the money has been paid to the county treasurer, he shall refund it to the person entitled, on his producing an attested copy of the record from the clerk of the court, certifying that such recognizance has been remitted or lessened, signed with his own proper name, with the seal of the court affixed thereto.

§ 15-119. *Forfeiture of bond before justice.*—On the failure of the accused to appear at the time and place mentioned in any bond taken by any justice of the peace for a continuance of any cause pending before him, and answer the charge, or, having appeared, on his departing the court without leave thereof first had and obtained, it shall be the duty of the justice of the peace then presiding to enter judgment nisi against the principal and his sureties in the bond for the amount mentioned therein, if the sum does not exceed the sum of two hundred dollars; and immediately issue notice to the principal and the sureties in the bond, giving ten days time, specifying time and place, to appear and show cause, if any they have, why the judgment nisi shall not be made final.

§ 15-120. *Judgment final, rendered and enforced.*—If the defendant shall fail to appear and show satisfactory reasons for not complying with the provisions of the bond, it shall then be the duty of the justice of the peace to render a final judgment thereon for the amount of the same, and immediately make and transmit to the clerk of the superior court a transcript thereof, which shall be entered upon the judgment docket of the court, and the clerk shall issue execution on the final judgment against the principal and his sureties for the collection of the amount thereof as in other judgments in behalf of the State.

§ 15-121. *Forfeiture of bond over two hundred dollars before justice.*—If the bond shall exceed the sum of two hundred dollars, and the accused shall fail to appear as therein provided to answer the charge, or, having appeared, shall depart the court without leave first had and obtained, it shall be the duty of the justice to have the accused called, and enter upon the bond that the defendant was called and failed to answer, and immediately return the original papers in the case together with the bond, to the clerk of the court having jurisdiction to try such action, who shall immediately enter the case upon the criminal docket of his court and enter judgment nisi for the amount of the bond, and issue notice to the accused and his sureties to appear at the next term to show cause why the judgment should not be made final and proceeded in as other cases of forfeited bonds in behalf of the State in such court. The entry on the bond by the justice of the peace shall be prima facie evidence that the principal therein had been called and failed to answer. Nothing in this section shall be so construed as to prevent justices of the peace from remitting the penalty of the bond or the right of appeal from the justice of the peace to the superior court by the defendant or his surety.

§ 15-122. *Right of bail to surrender principal.*—The bail shall have liberty, at any time before execution awarded against him, to surrender to the court from which the process issued, or to the sheriff having such process to return, during the session, or in the recess of such court, the principal,

in discharge of himself; and such bail shall, at any time before such execution awarded, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity to surrender him to the sheriff or court as aforesaid; and the sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given: Provided, that in criminal proceedings the surrender by the bail, after the recognizance has been forfeited, shall not have the effect to discharge the bail, but the forfeiture may be remitted in the manner provided for.

§ 15-122. *Right of bail to surrender principal.*

Provided, further, that if the defendant is in legal custody or imprisoned in the State of North Carolina or in any other state or territory of the United States at the time such defendant is bonded to appear in court, then the hearing on the writ of scire facias shall be continued for not less than ninety (90) days in order to give the surety an opportunity to produce the defendant.

Petitioners were not deprived of any constitutional rights by the forfeiture of their appearance bonds.

The Petitioners, having been convicted of kidnaping in the Superior Court of Union County, appealed to the Supreme Court of North Carolina where the indictments against them were quashed for the reason that the Supreme Court of North Carolina decided that the grand jury that returned the two bills of indictment was improperly organized because of racial discrimination in its selection (STATE v. LOWRY and STATE v. MALLORY, 263 N. C. 536, 139 S. E. 2d 870; see Opinion of Supreme Court of North Carolina in Appendix "B" of Petitioners' brief).

The Petitioners were warned in this Opinion that while the indictments were quashed the charge against them was not invalidated. The Supreme Court of North Carolina said:

> "The indictments are quashed, and the verdict and judgments are vacated for want of valid indictments to support them. It does not follow that the defendants are entitled to discharge and dismissal of the charges. If the State so elects it may send new bills and if they are returned true bills by an unexceptionable grand jury, defendants may be tried therein for the offenses alleged."

This Court will notice in the above language that the Supreme Court of North Carolina specifically stated that: "It does not follow that the defendants are entitled to discharge and *dismissal of the charges.*" (Emphasis ours) The Petitioners were, therefore, specifically warned that the *charges* still existed against them, and, therefore, under the terms of their appearance bond they were required to appear at the Superior Court of Union County and at each succeeding term of said Court "pending the final disposition of the above cases, and shall not depart the same without leave of the Court" (see provisions of appearance bond on p. 5 of Petitioners' brief).

In February, 1965, at a term of the Superior Court of Union County, Judge W. H. S. Burgwyn ordered the County Commissioners to constitute a new grand jury list without regard to race, creed or national origin, and this grand jury returned true bills again on the kidnaping charges (see State record in No. 509, pp. 7, 8; State record in No. 510, pp. 7, 8, 9). We repeat, Petitioners and their counsel were specifically warned in this Opinion that the charges had not been dismissed, and they should have known that Petitioners should be present in Court.

The Petitioners do not specifically attack any particular statute of North Carolina in regard to bail but say they did not have notice that the indictments had been returned. There are two answers to this position: Petitioners had notice by the terms of their appearance bond that they were required to appear from time to time until they were discharged by order of the Court. This is what is called in North Carolina a "continuing appearance bond." In STATE v.

EURE, 172 N. C. 874, 89 S. E. 788, the Supreme Court of North Carolina construed the conditions of an appearance bond and said:

> "An appearance bond by its terms, and under the uniform ruling of the Court, requires that the defendant appear term after term until he is discharged on a verdict of acquittal by order of the Court. An appearance bond is in lieu of custody in jail, in which case the defendant could not be released until discharged by order of the Court."

As early as 1905, the Supreme Court of North Carolina held (STATE v. SCHENCK, 138 N. C. 560, 49 S. E. 917) that a bail bond in this State binds to three things: (1) to appear and answer either to a specified charge or to such matters as may be objected; (2) to stand and abide the judgment of the Court; and (3) not to depart without leave of the Court. As to the third condition as to not departing without leave of the Court, the Supreme Court of North Carolina cited with approval STATE v. HANCOCK, 54 N. J. Law 393, 24 A. 726. The New Jersey Court in a situation similar to this one cited STATE v. STOUT, 6 Halst. 125, wherein the Court approved these three provisions and said: "That the party was not to depart until discharged, although no indictment should be found against him." The New Jersey Court further gave an unanswerable reason for its position for in discussing the situation Chief Justice Beasley said:

> "All rational intendment is adverse to the narrower and special meaning of the word "cause" as employed in the statute, for it is hardly conceivable that it was the legislative purpose to absolve a criminal who was under bail from all obligation to render himself in court in the event of the existence of a flaw in the indictment. In that way criminals of the highest grade and of the most dangerous character would often escape the pursuit of justice. In my opinion, the quashing of this indictment did not finally determine the cause—that is, the prosecution of the culprit.

In UNITED STATES v. WHITE, Case No. 16,678, 28 Federal Cases, Circuit and District Courts, 1789—1880, the Court held, as stated in the headnote:

> "A reconnaissance, to appear in court from day to day, to answer a certain indictment, and not to depart without the leave of the court, is not discharged by the quashing of that indictment, and if a new indictment be found, he and his bail are bound for his appearance to answer such new indictment."

In STATE v. WARDEN, 119 Wash. 290, 205 P. 372, the Court said:

> "The obligation of the bondsmen was to see that the defendant appeared in court and answered to the charge, which was that of rape, and they are not discharged on their obligation until the defendant has been released from that charge. The obligation was not to answer the complaint actually on file, but to answer to the charge of rape, whether presented by the complaint or subsequent information properly alleging the crime."

In STATE v. SPELLER, 229 N. C. 67, 47 S. E. 2d 537, where a bill of indictment was quashed because of grand jury discrimination, the Supreme Court of North Carolina said:

> "The defendant is not to be discharged. He will be held until the accusation against him can be performed by an unexceptionable grand jury, and, even after the present bill is quashed, the court may still order his detention for a like purpose, if need be, in manner similar to that approved in STATE v. GRIFFICE, 74 N. C. 316."

Likewise, in STATE v. COVINGTON, 258 N. C. 495, where a new trial was ordered the Supreme Court of North Carolina said:

> "The defendant is not to be discharged. He will be held

until indictments against him can be found by an unexceptionable grand jury."

Again in STATE v. PERRY, 248 N. C. 334, the Supreme Court of North Carolina held that the defendant had not been given reasonable time to produce evidence of racial discrimination in the selection of the grand jury, and the defendant was awarded a new hearing. The Court said if upon the new hearing discrimination was found and the indictment quashed, then "the defendant is not to be discharged. He will be held until indictment against him can be found by an unexceptionable grand jury."

The substance of the above holdings is that a defect in the bill of indictment is an informality that does not relieve the defendant of the "charge" or "cause" against him. In the first trial of any defendant there may be various defects in the trial or in rulings on matters of criminal procedure but the cause or charge of kidnaping, as in this case, still exists against the defendants and under their bail bond they are still required to appear until they are discharged by order of the Court. It is believed that this Court has held in substance that the principles here contended for are valid (HILL v. TEXAS, 316 U. S. 400, 86 L. ed. 1559, 62 S. Ct. 1159; PATTON v. MISS., 332 U. S. 463, 92 L. ed. 76, 68 S. Ct. 184).

The Question of Notice to Petitioners

The petitioners complain that on the second bills of indictment there was no preliminary hearing and it is contended that "the accused must be promptly afforded a preliminary hearing in which he is permitted to test the sufficiency of the evidence against him." The Petitioners do not cite any authority for this proposition, and it is not believed that they could find any holdings of appellate courts to such effect. This is not the rule in North Carolina, as will appear in the case of STATE v. SAMUEL HARGETT, 255 N. C. 412, 121 S. E. 2d 589.

The North Carolina statute as to forfeiture of bail was rig-

idly followed as will appear in State records on file in this case. The North Carolina statute (G. S. 15-110) requires the principal of a bond to "appear according to the obligation thereof." It is also provided by the North Carolina statute (G. S. 15-113) that no execution shall issue upon a forfeited appearance bond until a notice has issued against the person who has forfeited his reconnaissance, and G. S. 15-114 states what the notice must contain. As to the service of the notice (G. S. 15-115) it is provided as follows:

> "All notices issuing upon forfeited reconnaissances shall be executed by leaving a copy with each of the defendants, or at his present place of abode. And in case he cannot be found, and has no known place of abode, and the matter be returned, then a notice shall issue, and on the like return the same shall be deemed duly served."

An examination of the records will show that this procedure was followed, and certainly the corporate sureties cannot complain for notice was served upon the attorney in fact for these companies, and as will be seen in each record in this case the sureties, Resolute Insurance Company and Tidewater Bonding and Surety Company, Inc., filed answers to the writs of *scire facias* served upon their attorney in fact. Certainly these corporate sureties through their agents either knew where the Petitioners were hiding or there had been deposited with them so much collateral that they did not care to know. We have never known where Petitioners went nor to this day does the State of North Carolina and its officers know where the Petitioners have secreted themselves. It was impossible to serve these writs of *scire facias* upon the individual Petitioners, and if the procedure laid down in the North Carolina statutes on the forfeiture of bail is not valid, then every criminal in the State may put himself or herself beyond the reach of the law.

It should also be pointed out that after the first writ of *scire facias* is issued it is made returnable at the next term of court "commencing 30 days after the service of same, and the defendant and his sureties may file answer as in civil

actions prior to the return date." Certainly the sureties in this case had ample notice and although the Petitioners through their attorneys disclaim any notice to them, it is not contended that attorneys for Petitioners did not know that these forfeiture proceedings were pending. Under North Carolina law (G. S. 15-122) the bail had the full right to arrest the body of his principal and surrender him to the sheriff, and these Petitioners have never at any time availed themselves of the remedy provided by G. S. 15-116, which provides that the Judges of the Superior Courts may hear and determine the petition of all persons who shall conceive that they merit relief on their reconnaissances forfeited. These same Judges may lessen, or absolutely remit the forfeiture and this before as well as after final judgment entered and execution awarded (STATE v. BRADSHER, 189 N. C. 401, 127 S. E. 349; STATE v. DEW, 240 N. C. 595, 83 S. E. 2d 482).

In view of the fact that in North Carolina the sureties on a bail bond have legal custody of the Petitioners, which is a substitute for being in custody in jail, and the sureties can at all times surrender the Petitioners in exoneration of their liability at any time, either before or subsequent to bond forfeiture, it is the position of the State of North Carolina that actually notice to the sureties constitutes actual notice to the principals or the Petitioners. In STATE v. LINGERFELT, 109 N. C. 775, 14 S. E. 75, the Supreme Court of North Carolina quoted from the case of 16 Wall. 371, the language of this Court as follows:

> "When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge, and if that cannot be done at once they may imprison him until it can be done. They may exercise their right in person or by agent; they may pursue him into another state; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. * * * In 6 Modern, 231, it is

said: 'The bail have their principal on a string and they may pull the string whenever they please, and surrender him in their discharge.' The right of the bail in civil and criminal cases are the same."

Undoubtedly the corporate sureties in this case have taken ample collateral to secure any liabilities that they may incur. If they can invalidate these proceedings and have themselves released from liability, then the Petitioners will never again be seen in the State of North Carolina, and it will be open to them to seek asylum in Communist Cuba with Robert Williams who participated with them in this kidnaping and who is now Castro's propaganda agent. The invalidation of these State proceedings by this Court will result in a situation where there can be no forfeiture of bail if the principal will remain concealed until actual notice is served upon him even though the sureties are served with actual notice. It will be a plain invitation to all persons charged with crime to become fugitives from justice.

CONCLUSION

The State of North Carolina earnestly requests this Court to reject this petition for certiorari. Even though final judgment has been entered against both Petitioners and their sureties, if the Petitioners will appear for trial the sureties still have the right to file a petition and ask for total or partial relief from the penalties of the appearance bonds (see G. S. 15-116, supra).

This bail bond procedure, or its equivalent, has been used by the State of North Carolina for generations. It has been construed by the Supreme Court of North Carolina and we contend that this is a plain case where the Supreme Court of a state has done nothing more than interpret and pass upon its own laws and procedures. The petitioners have no vested or constitutional right in appellate court interpretations, and cases may be overruled, distinguished or new interpretations made to fit new situations without depriving the Petitioners of any constitutional right. This Court has re-

peatedly affirmed the general proposition that the Fourteenth Amendment basically provides for fundamental fairness but the states have the right to choose the various procedures by which criminal affairs shall be conducted, and it was not intended by the Fourteenth Amendment to force all of the states into the same pattern of conformity in their criminal administrative procedures. North Carolina asks this Court to deny this petition.

Respectfully submitted,

T. W. BRUTON
Attorney General of North Carolina

RALPH MOODY
Deputy Attorney General

Justice Building
Raleigh, North Carolina

Counsel for the State of North Carolina,
Respondent.